INTERIOR BOARD OF INDIAN APPEALS

Herschel Sahmaunt, et al. v. Anadarko Area Director, Bureau of Indian Affairs

17 IBIA 60 (01/30/1989)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

HERSCHEL SAHMAUNT ET AL.
v.
AREA DIRECTOR, ANADARKO AREA OFFICE, BUREAU OF INDIAN AFFAIRS

IBIA 88-29-A Decided January 30, 1989

Appeal from a decision of the Anadarko Area Director, Bureau of Indian Affairs, declining to review a decision of the Court of Indian Appeals of the Anadarko Area Court of Indian Offenses concerning a Kiowa tribal election dispute.

Appeal dismissed.

1. Administrative Procedure: Administrative Review--Board of Indian Appeals: Generally

   The Board of Indian Appeals will not consider the merits of a moot appeal where there is no showing that it involves a potentially recurring question raised by a short term order, capable of repetition, yet evading review.

2. Board of Indian Appeals: Generally--Indians: Tribal Government: Constitutions, Bylaws, and ordinances

   The Board of Indian Appeals undertakes to interpret tribal law only where there is a clear necessity for it to do so.

APPEARANCES: Jim Merz, Esq., Oklahoma City, Oklahoma, for appellant; Neil R. McDonald, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Herschel Sahmaunt and members of the Kiowa Election Board have appealed from a January 25, 1988, decision of the Area Director, Anadarko Area Office, Bureau of Indian Affairs (appellee; BIA), declining to review a decision of the Court of Indian Appeals of the Anadarko Area Court of Indian Offenses (CFR appellate court) 1/ concerning a Kiowa tribal election dispute. For the reasons discussed below, the Board dismisses this appeal as moot.

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1/ Courts of Indian Offenses, also known as "CFR courts," operate pursuant to the regulations in 25 CFR Part 11.

Background

Appellant Sahmaunt was elected Chairman of the Kiowa Tribe on June 7, 1986. A protest challenging his eligibility for office was filed with the tribe, apparently after the election, by another candidate for chairman. The protest alleged that Sahmaunt was ineligible because he had been delinquently indebted to the tribe for a period of over 2 years and was thus precluded by the tribal constitution from holding office. 2/ On June 16, 1986, the Kiowa Election Board denied the protest as untimely. The matter was appealed to the Kiowa Hearing Board, which held that Sahmaunt was ineligible for office, that his election was void ab initio, and that a new election should be conducted. Sahmaunt and the Election Board failed to comply with the Hearing Board's decision. The Hearing Board, apparently lacking effective tribal enforcement mechanisms, sought injunctive relief and a writ of assistance against Sahmaunt, the Election Board and others, in the Anadarko Area Court of Indian Offenses (CFR trial court). On July 16, 1986, the CFR trial court issued a temporary restraining order. It scheduled a hearing for July 23, at which Sahmaunt and the other defendants made a special appearance, through counsel, and moved to dismiss the case on the grounds that the court lacked jurisdiction over the dispute because it was an internal tribal election matter. On August 15, 1986, the CFR trial court, holding that it had jurisdiction, issued a permanent injunction restraining Sahmaunt from acting as tribal chairman. It also issued a writ of assistance directing tribal and BIA police to remove Sahmaunt from the tribal chairman's office.

On August 12, 1986, Sahmaunt and the other defendants filed a petition in the CFR appellate court, requesting it to assume original jurisdiction over the matter and issue a writ of prohibition against the trial judge. The petitioners alleged, inter alia, that the trial court lacked jurisdiction because the dispute was an intra-tribal matter and because no summons had been issued in the case, in violation of rule 2.3(c) of the CFR court's rules of trial procedure. 3/ On January 6, 1987, a panel of the CFR appellate court granted the petition. The panel vacated the injunction and writ of assistance issued by the CFR trial court, holding that the trial court lacked jurisdiction because of the failure to issue a summons.

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2/ Article III, Section 4, of the Kiowa constitution provides:

"All members of the Kiowa Tribe who have reached the age of twenty-one (21) years shall be eligible to serve as members of the business committee, or subordinate offices by election or appointment, except those persons previously convicted in a court of competent jurisdiction of a felony involving dishonesty, or any Kiowa member who is indebted delinquently to the Kiowa Tribe in excess of two (2) years or a Kiowa member who has been recalled from the Kiowa Business Committee because of misuse of tribal and/or program funds."

3/ Rule 2.3(c) provides in relevant part: "A civil action is deemed commenced by filing in the office of the Agency Court Clerk a petition and by the clerk's issuance of summons thereon."

On January 9, 1987, another panel of the CFR appellate court vacated the January 6 order on the grounds that the two appellate judges who had signed it were without authority to do so. 4/

On November 17, 1987, a third panel of the CFR appellate court denied the petition for writ of prohibition, thereby leaving the CFR trial court's orders in effect. The appellate panel held that the petitioners had waived their objection to the lack of a summons because they had not raised it at the trial level.

Concerning the CFR trial court's jurisdiction over the subject matter of the dispute, the appellate panel stated that "[u]nless specifically delegated or requested by proper tribal authority the Court does not have jurisdiction to entertain the substantive merits of an internal tribal dispute" (Nov. 17, 1987, Opinion at 14). It concluded, however, that the trial court had not exceeded its authority because (1) it had not attempted to resolve a tribal election dispute but had merely acted to enforce an order of the tribal body authorized to resolve election disputes, and (2) a CFR court has authority to enforce orders of tribal dispute-resolving entities where no other adequate enforcement mechanism is available. Id. at 13.

By letter of December 18, 1987, Sahmaunt and the Election Board requested appellee to vacate, set aside, and reverse the CFR appellate court's decision. On January 25, 1988, appellee denied the requested relief on the grounds that he lacked review authority over decisions of the CFR court. His decision states in part:

> 25 Code of Federal Regulations §2.3 provides that appeals may be taken from Bureau of Indian Affairs officials "under the supervision of the Area Director." The magistrates and judges are not supervised by line officers of the BIA; they are appointed under a special procedure set out in 25 CFR §11.3. No provision is made in the regulations for line authority in the performance of the judicial duties, nor do the regulations in this part indicate any intent to make judicial decisions subject to administrative review.
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> It is noted that 25 CFR §11.21 provides for cooperation of BIA employees with the courts. It is clearly stated that no field employee shall "control the functions" of the courts. This language would be inconsistent with any direction, supervision, or review by the Area Director or Superintendents over the magistrates decisions.

(Jan. 25, 1988, Decision at 1).

Sahmaunt and unnamed individual members of the Election Board filed an appeal of this decision with the Assistant Secretary--Indian Affairs. The

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4/ A Jan. 9, 1987, Area Director's letter indicates that one of the judges had resigned in November, 1986, and the other judge's term of office had expired in December 1986.

appeal was referred to the Board pursuant to 25 CFR 2.19(a)(2) 5/ by the Deputy to the Assistant Secretary--Indian Affairs (Tribal Services) and was docketed on June 23, 1988.

After appellants' opening brief was filed, appellee moved to dismiss the appeal on grounds of mootness. The motion was based on the statement in appellants' brief that appellant Sahmaunt had been recently reelected Chairman of the tribe. Appellants filed a brief opposing dismissal. The Board denied the motion on September 28, 1988, but stated that appellee could renew the motion if he provided the requisite support for the claim of mootness. Appellee then filed an answer brief.

Discussion and Conclusions

Appellants allege that the trial and appellate levels of the CFR court committed various errors. 6/ They also appear to contend that review of CFR court decisions by BIA officials is necessary to assure compliance with Federal law and regulations.

In his answer brief, appellee, inter alia, renews his motion to dismiss for mootness, noting that appellant Sahmaunt has now resigned from the position of Chairman of the tribe.

Sahmaunt was reelected Chairman in June 1988. He evidently served in that capacity until he resigned from office in October 1988. A report of his resignation is given in an October 3, 1988, Anadarko Daily News article submitted with appellee's brief. Appellants do not dispute the truth of this report.

It is apparent that appellants have obtained the relief they initially sought, i.e., recognition of Sahmaunt as Chairman of the tribe, even though that recognition evidently resulted from the June 1988 election rather than from a final resolution of the dispute involved in this appeal. In LeBeau v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 14 IBIA 84 (1986), the Board dismissed an appeal concerning a tribal election dispute because the appellants, who had initially been precluded from running for tribal office, were permitted to run in a later election and were

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5/ 25 CPR 2.19(a) provides:

"Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or BIA official exercising the administrative review authority of the Commissioner] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision."

6/ They continue to argue that a summons was required to initiate action in the CFR trial court and contend that the CFR appellate court incorrectly relied on state law to conclude that appellants had waived their right to a summons. They also argue that the CFR trial court erred in failing to inquire into the procedures followed by the Hearing Board. Finally, they challenge the credentials of one of the appellate judges who issued the Jan. 9, 1987, order vacating the Jan. 6 order.

elected to office. The Board concluded that, because the appellants had received the relief they requested, the appeal was moot.

The circumstances here are similar. Appellant Sahmaunt, found to be ineligible for office in the tribal decision which gave rise to this appeal, has subsequently run for office and been elected. He has served as Chairman and has now resigned from office. This appeal, therefore, clearly appears to be moot.

[1] Although the doctrine of mootness normally precludes the consideration of moot issues, the Board recognizes an exception where there is a potentially recurring question raised by short term orders, capable of repetition, yet evading review. Estate of Peshlakai v. Navajo Area Director, 15 IBIA 24, 32-34, 93 I.D. 409, 413-14 (1986). See also Tohono O'odham Nation v. Phoenix Area Director, 15 IBIA 147, 156-57, 94 I.D. 120, 125 (1987). Appellants ask the Board to invoke this exception, despite Sahmaunt's reelection, because of the possibility that the "wrongs appealed from" may be repeated. There is no certainty, however, or even a reasonable expectation, that the particular actions of which appellants complain in this appeal will reoccur.

[2] Further, the dispute which gave rise to the appeal was an internal tribal matter and involved the interpretation of a provision of the tribal constitution. The Board undertakes to interpret tribal law only where there is a clear necessity to do so; it has declined to invoke the exception to the mootness doctrine where, in order to render a decision on the merits, it would have been required to interpret tribal law. Fort McDermitt Paiute Shoshone Tribe v. Acting Phoenix Area Director, 16 IBIA 221 (1988). Although, in this case, a number of other issues have evolved as the appeal has progressed, there is a possibility that a decision on the merits would require an interpretation of tribal law.

The Board finds no reason to invoke the exception to the mootness doctrine in this case.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Anadarko Area Director's January 25, 1988, decision is dismissed as moot.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge